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No. 84-406
No. 84-418

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1984

NATIONAL FOOTBALL LEAGUE, et al.
*Petitioners,*

v.

OAKLAND RAIDERS, LTD. and LOS ANGELES MEMORIAL COLISEUM COMMISSION
*Respondents.*

**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF THE NATIONAL BASKETBALL ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF THE PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

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## MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF THE NATIONAL BASKETBALL ASSOCIATION IN SUPPORT OF THE PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The National Basketball Association ("NBA") respectfully moves for leave to file the accompanying brief *amicus curiae*. Petitioners have consented to the filing of such a brief; respondents have not.

The NBA operates a professional basketball league organized as a joint venture for the presentation of professional basketball in particular geographic locations in the United

States. As set forth in the accompanying brief, the NBA has a vital interest in the selection of geographic locations that will enhance its ability to market and promote professional basketball and to compete effectively with other forms of public entertainment. All members of the NBA are bound by contract to operate in a designated city and to seek approval from the NBA before a franchise can be relocated.

The right of the NBA to take collective action relating to the location and relocation of its franchises has been drawn into question by the decision of the Ninth Circuit in this case. In particular, shortly after that decision, and in express reliance upon it, one of the NBA's member clubs announced that it was now free to move its franchise anywhere it chose, at any time it saw fit, and it did in fact move without NBA approval from San Diego to Los Angeles, causing substantial disruption to the NBA and resulting in major contract and antitrust litigation now pending in San Diego. That suit is but the most recent example of an explosion of litigation that has been produced by the profound uncertainty surrounding the proper application of the antitrust laws to the operation of professional sports leagues.

Petitioners will necessarily concentrate on the peculiar facts of their own case. The NBA seeks leaves to file the accompanying brief to bring to the Court's attention the NBA's own long history of litigation resulting from the confusion and unpredictability as to the right of sports leagues to select the geographic location in which their teams will operate. Such pervasive confusion regarding a subject of national importance calls for authoritative clarification by this Court.

Wherefore, the NBA respectfully prays that its motion for leave to file the accompanying brief *amicus curiae* be granted.

Respectfully submitted,

/s/ Michael A. Cardozo

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## BRIEF *AMICUS CURIAE* OF THE NATIONAL BASKETBALL ASSOCIATION IN SUPPORT OF THE PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The National Basketball Association ("NBA") submits this brief as *amicus curiae* in support of the petitions for a writ of certiorari.

## INTEREST OF THE *AMICUS CURIAE*

The NBA operates a professional basketball league organized as a joint venture comprised of 23 members, each of which holds a franchise, granted by the NBA, for the presenta-

tion of professional basketball in particular geographic locations in the United States.[1]

The NBA is engaged in intense economic competition with other professional sports leagues as well as all other spectator sports and all forms of public entertainment for gate receipts, radio, television and cable revenue and other sources of income. All members of the NBA have a vital interest in the selection of geographic locations that will enhance professional basketball's ability to market and promote its product and to compete effectively with other forms of public entertainment.

All members of the NBA are by agreement bound by the Constitution of the NBA. Pursuant to that Constitution, each member has been granted a franchise, and has undertaken to operate a professional basketball team, in a designated city. Since its formation in the late 1940's, the NBA has always required approval by its Board of Governors before a franchise could move to another location. Nevertheless, shortly after the Ninth Circuit's decision in this case, one of the NBA's member clubs, the San Diego Clippers, announced its intention to—and in fact did—relocate its franchise to Los Angeles without seeking Board of Governors' approval. Relying expressly on the Ninth Circuit's decision, the San Diego team informed the NBA that it was now free to move its franchise anywhere it chose, at any time it saw fit, and that it would be a violation of Section 1 of the Sherman Act for the NBA *even to consider* whether or not to approve the relocation.

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1 The NBA's members are each owned and operated by one of the following entities: Atlanta Hawks Limited, Boston Celtics Corporation, Chicago Professional Sports Corporation, Cleveland Professional Basketball Company, Dallas Basketball Limited, Denver Nuggets Basketball Ltd., Detroit Pistons Basketball Company, San Francisco Warriors, Houston Rockets Professional Basketball Club, Inc., Pacers Basketball Corporation, Kings Professional Basketball Club, Inc., The Los Angeles Lakers, Inc., Milwaukee Professional Sports and Services, Inc., Meadowlands Basketball Associates, Madison Square Garden Center, Inc., Philadelphia 76ers Basketball Club, Inc., Phoenix Professional Basketball Club, Pro Basketball, Inc., Spurs Professional Basketball Limited, SDC Basketball Club, Inc., Seattle SuperSonics, Inc., Jazz Basketball Club, and Capital Bullets Basketball Club, Inc.

In the face of the $50 million damage award entered in this case by the trial court against the National Football League ("NFL")—an award which, if made against the NBA, would bankrupt it—the only prudent course available to the NBA was to schedule the Clippers' home games for the 1984-85 season in Los Angeles and to commence an action seeking a declaration that the NBA has the right, consistent with the antitrust laws of the United States, to consider, and approve or disapprove, the proposed relocation in the best interests of the League. Such an action has been commenced. An injunction directing the team to return to San Diego, as well as damages caused the NBA by the Clippers' usurpation of a valuable corporate opportunity available to all NBA members, is also sought.[2]

The Ninth Circuit has held that the NFL's rule prohibiting franchise relocation without the prior approval of three-fourths of the member clubs amounts to an agreement among independent economic competitors that unreasonably restrains trade. For the reasons outlined in the petitions and in the dissent below, this *amicus* believes the decision of the Ninth Circuit to be erroneous. Whether it is right or wrong, however, the broad contrariety of views expressed by the federal courts as to the proper application of Section 1 of the Sherman Act to the functioning of professional sports leagues has created profound uncertainty with respect to the ability of such leagues to exercise responsible business judgment in deciding upon the geographic locations in which their teams will operate. This issue affects not only the vital interests of sports leagues, but concerns as well the interests of states, municipalities, taxpayers and consumers throughout the country and presents a classic occasion for authoritative resolution by this Court.

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2 *National Basketball Association* v. *SDC Basketball Club, Inc. and Los Angeles Memorial Coliseum Commission*, No. 84-1430-N (CM) (S.D. Cal. filed June 15, 1984).

## ARGUMENT

### THE QUESTION PRESENTED IS OF NATIONAL IMPORTANCE AND IS SHROUDED IN THE UNCERTAINTY OF CONFLICTING AND DIVERGENT LOWER COURT DECISIONS, CALLING FOR AUTHORITATIVE GUIDANCE BY THIS COURT

The petitions for a writ of certiorari demonstrate a substantial measure of disagreement among the federal courts with respect to the application of the antitrust laws to the unified action of a professional sports league and substantial ground for urging that the decision below is wrong (Petition of NFL, pp. 6-20; Petition of Oakland-Alameda County Coliseum, Inc., pp. 19-22). Joining in those submissions without repeating them, the NBA stresses the intense national interest in the subject of the relocation of sports franchises and the high cost of continued confusion and unpredictability. While we submit that the court of appeals erred in concluding that an agreement among league members designating the locations of league operations can be a conspiracy among competitors in violation of Section 1, we would stress even more urgently the need for a clear and authoritative statement of the antitrust principles applicable to such arrangements. Indeed, the decision of the Ninth Circuit itself has apparently added to the uncertainty beclouding this critical area of sports league operations.[3]

3 As we read the Ninth Circuit's decision, it confirms that the members of sports leagues jointly produce a product that competes in a broader entertainment market and it recognizes that a league may properly impose restrictions on team movement so long as the limitations are "tailored to serve the needs inherent in producing the . . . 'product' and competing with other forms of entertainment" (Opinion below, App. A to NFL Petition, p. 26a). The court went on to suggest that antitrust concerns could be eliminated by an express recognition and consideration of various objective factors governing team relocation and the creation of a procedural mechanism to ensure consideration of those factors.

Although the NBA promptly adopted the very standards and procedures outlined by the Ninth Circuit, it was met by the subsequent action of the Clippers (represented by the same attorneys appearing for one of the

The lack of guidance in the application of the antitrust laws to league decisions concerning the location of franchises has produced an explosion of litigation. The NFL's petition for certiorari notes that no fewer than eight suits have been prosecuted in federal and state courts with respect to the move of the Oakland Raiders and that at least five actions are pending as to the recent unilateral move of the Baltimore Colts of the NFL to Indianapolis. The NBA's own experience graphically illustrates that absent an authoritative resolution of the issue by this Court, sports leagues will continue to face the prospect of protracted and burdensome litigation, and potentially devastating legal penalties, whether they permit or prohibit proposed franchise relocations:

1. In 1976, the then Buffalo Braves advised the City of Buffalo, owner of the arena in which the Braves had played their NBA games, that a transfer of their franchise to Florida was planned and that approval for the transfer would be sought from the NBA. Before the NBA had taken any action at all, the City of Buffalo filed suits in Buffalo state and federal courts seeking an injunction to prevent the NBA from authorizing any relocation out of Buffalo and $64 million in damages for alleged violations of the Sherman Act.[4] The suit, in which the plaintiff obtained a temporary order restraining any move, was discontinued only after the Braves withdrew their 1976 proposal to relocate the franchise.

2. In 1979, the NBA approved the transfer of the New Orleans franchise to Salt Lake City. The team had enjoyed little success in New Orleans and had incurred substantial

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respondents here) which moved to Los Angeles without NBA approval, contending that the Ninth Circuit's opinion supports the Clippers' view that a member of a sports league has the unfettered right to move its franchise anywhere at any time, and that *any* restriction of *any* kind on the alleged right of a team unilaterally to select the location of its games is a violation of Section 1 and subjects the league to grievous damages.

4 *City of Buffalo* v. *Atlanta Hawks*, No. 76 Civ. 261 (W.D.N.Y. filed June 15, 1976); *City of Buffalo* v. *Buffalo Braves Inc.*, No. 30407 (Sup. Ct. Erie Co. filed June 18, 1976).

losses. Nevertheless, suit was filed in a Louisiana state court by the State of Louisiana and the state agency operating the New Orleans Superdome seeking to prohibit the move and claiming $60 million in damages for alleged violations of the Louisiana antitrust laws. The City of New Orleans intervened in the action as a plaintiff. A temporary restraining order was entered prohibiting the team from playing its home games in any location outside of New Orleans. Although the NBA ultimately prevailed, it took more than four years of expensive and time-consuming litigation to defeat the damage claims.[5]

3. In June 1982, the San Diego franchise requested immediate NBA approval for a transfer of its operations to Los Angeles. Less than three weeks later, the NBA Board of Governors voted to table the matter, pending a full investigation of whether the proposed transfer would best serve the interests of the NBA. The NBA was promptly sued in Los Angeles federal court by the San Diego team,[6] which alleged that the mere consideration of its request by the NBA was a violation of the antitrust laws and that the NBA's failure to grant immediate, unquestioning approval had caused damages to the team in excess of $100 million. At the same time, the NBA was sued in a California state court by two of the San Diego team's season ticket holders, who claimed that the NBA would be in violation of the antitrust laws if it *did* approve the transfer.[7] The NBA was also threatened with suit by the City of

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5 *HMC Management Corporation* v. *The New Orleans Basketball Club*, 375 So.2d 700 (La. App. 1979). *See also County of Nassau* v. *Long Island Sports Enterprises, Inc.*, (Sup. Ct. Nassau Co. unfiled), seeking relief because of the move of an NBA team from New York to New Jersey; *D.H. Holmes Co.* v. *The New Orleans Jazz*, No. 79-11309 (Civil Ct. Parish of Orleans filed July 30, 1979), seeking damages allegedly incurred by a ticket agency because the NBA allowed the New Orleans team to move to Utah.

6 *Los Angeles Memorial Coliseum Commission and SDC, Inc.* v. *National Basketball Association*, No. 82-3165-CBM (Gx) (C.D. Cal. filed June 24, 1982).

7 *Pancer* v. *Sterling*, No. 487979 (Super. Ct. Cal. filed June 18, 1982).

San Diego and the corporation that owned the San Diego Sports Arena if it approved the relocation. In anticipation of this barrage of litigation from all sides, the NBA itself commenced a declaratory judgment action, seeking guidance from the federal court in San Diego as to the action the NBA could lawfully take.[8] The firestorm of legal activity ended only when the San Diego franchise abandoned its request to move. This respite, however, was short lived as the NBA was once again plunged into litigation when the Clippers announced in May, 1984 that it was moving to Los Angeles without seeking approval of the NBA Board of Governors.[9]

The ability to make responsible judgments about team location is fundamental to the operation of professional sports leagues. Yet the present uncertainty as to the reach of the antitrust laws has rendered sports leagues powerless to act on questions of franchise relocation without subjecting themselves to plainly unacceptable legal risks. This pervasive confusion regarding a subject of national importance calls for authoritative clarification by this Court.

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8 *National Basketball Association* v. *SDC Basketball Club, Inc.*, No. 820743-N (I) (S.D. Cal. filed June 22, 1982).

9 See n. 2 *supra*.

## CONCLUSION

The petitions for a writ of certiorari should be granted.

Respectfully submitted,

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